

The Flinn Report

Illinois

Regulation

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

☞ PREDATORY LENDING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Predatory Lending Database" (38 Ill Adm Code 346; 30 Ill Reg 6226), effective 8/18/06, to address confidentiality and security protocols for the database. A database vendor may have relevant provisions of the Residential Real Property Disclosure Act imposed upon him or her. The vendor must have written policies and procedures to protect confidentiality that must be forwarded to the Department, and the database program will not be allowed to operate until the Department has reviewed those policies to its satisfaction. The vendor must provide "adequate" supervision and training of his or her agents, employees, and subcontractors to ensure confidentiality, and data transmitted to and from the database must be encrypted using 128-bit encryption, with encryption provided by "Secure Socket Layers". The database must also incorporate a completely automated virus protection scheme with virus patch updates. A Federal National Mortgage Assoc. (Fannie Mae) loan data reporting document listing required information to be reported to the database is

incorporated by reference. Changes since 1st Notice require encryption of social security numbers, add further citations to Fannie Mae data formats, and remove DFPR's authority to determine equivalent formats. Those affected by this rulemaking include HUD-certified counselors and certain licensees doing business in the pilot Chicago areas who are licensed under the Residential Mortgage License Act and the Title Insurance Act.

☞ CONTRACEPTIVES

DFPR also adopted an amendment to "Pharmacy Practice Act of 1987" (68 Ill Adm Code 1330; 30 Ill Reg 6641), effective 8/21/06, requiring Division I pharmacies to display a notice of rights applicable to dispensing contraceptives. (A Division I pharmacy is one that engages in general community pharmacy practice and is open to, or offers pharmacy service to, the general public.) The rulemaking details the specific language to be utilized in the Notice of Rights sign, dictates that the sign must be on 8 1/2" x 11" paper, and requires the sign to include information concerning how an individual may file a complaint against the pharmacy, as prescribed

(cont'd next page)

Proposed Regulations

☞ HOUSEHOLD GOODS CARRIERS

The ILLINOIS COMMERCE COMMISSION proposed amendments to "Household Goods Carriers" (92 Ill Adm Code 1457; 30 Ill Reg 14199) to update the Part. ICC must consider whether an applicant for a temporary household goods carrier license has operated illegally in the past or has been the subject of administrative citations or civil penalties. Components of the temporary licensee compliance audit that the ICC is required to conduct are listed. Hearings on denial of a permanent license must be held within 45 days after a request for a hearing, and ICC's failure to enter a final order within 120 days after a hearing request will constitute denial of a permanent license. If, during a 6-month extension of a temporary license, the holder is found to be in substantial non-compliance with ICC rules, the holder must cease operating immediately. Applicants may not advertise until licensed, and violations of advertising standards subject a carrier to sanctions under the Commercial Transportation Law. Carriers may not accept barter as payment, claims for loss or damage must be filed within 90 days (now, 9 months), and bills of lading and freight bills must be consecutively numbered. Also, a copy of ICC's consumer guide must be given to the shipper. Those affected by this rulemaking include businesses licensed as household

(cont'd page 4)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

in a DFPR-approved template available from the Department's website. The Notice of Rights must be clearly visible from the area where customers drop off prescriptions to be filled. A change since 1st Notice references applicable DFPR hearing rules and due process procedures. Division I pharmacies will be affected by this rulemaking.

Questions/requests for copies of the 2 DFPR rulemakings above: Barb Smith, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax 217/782-7645.

LONG-TERM CARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments for "Medical Payment" (89 Ill Adm Code 140; 30 Ill Reg 1231 and 6230) and "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 30 Ill Reg 6257), both effective 8/18/06. The Part 140 amendment specifies that, effective 7/1/06, exceptional care services will be covered under the Part 147 MDS-based (minimum data set) reimbursement methodology. Any resident who is qualified for the Department's exceptional care program as of 6/30/06 will continue to be reimbursed at the 6/30/06 rate until the resident is no longer eligible for the exceptional care category. Resident status reviews will occur every 90 days, and no new residents will be accepted into the exceptional care program. When a facility no longer has such residents, its exceptional care contract will be terminated. Effective 7/1/06, facilities will receive 90% of the funds necessary to fund the nursing component of the rate in effect on 6/30/06. The remaining appropriation available in the rate period for the rate's nursing component will be allocated proportionally across all facilities according to the MDS-based reimbursement methodology listed in Table A of Part 147. This percentage gradually decreases to zero by 7/1/10 when all nursing component funding will be allocated based on Table A.

Additional Part 140 amendments increase the thresholds for capitalizing repairs and leasehold improvements from \$1,500 to \$2,500 and \$500 to \$2,500 respectively. The changes apply to acquisitions of fixed equipment, betterments and improvements, repairs and movable equipment costs, painting and wallpaper, disposal of assets, central office and partnership assets, and change of ownership. The changes in Part 153 require that capital rates be adjusted based upon audits of cost reports in accordance with the Part 140 updates. Changes since 1st Notice combine Part 140 amendments that were separately proposed in January and April into this one adopted rulemaking. Also, whether to capitalize and depreciate painting and wallpapering costs of \$2,500 or more over 5 years is made a choice rather than a requirement. Those affected by these rulemakings include long-term care facilities.

Questions/requests for copies: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/557-7157.

SCHOOLS

The STATE BOARD OF EDUCATION and the OFFICE OF THE STATE FIRE MARSHAL together adopted new Parts titled "Joint Rules of the Office of the State Fire Marshal and the State Board of Education: School Emergency and Crisis Response Plans", both effective 8/18/06, to implement the School Safety Drill Act. The SBE Part is numbered 1500 (29 Ill Adm Code 1500; 30 Ill Reg 6052) and the OSFM Part is numbered 1510 (30 Ill Adm Code 1510; 30 Ill Reg 6082). The Act states the types and number of drills and the involvement of local authorities; requires an annual review of each school district's emergency and crisis response plans, protocols, and procedures; and also requires review of each building's compliance with school safety drill programs. In their annual review, school boards are required to involve school principals;

representatives from any education-related organization or association; and representatives from fire departments, law enforcement, or EMS personnel. As the Act is explicit in its requirements, the Board and the Fire Marshal have developed rules for two aspects of the Act: (1) determining what will be accepted as an effective annual review of these local board emergency and crisis response plans and (2) stating what the fundamental objectives of the various types of drills are. Specifically, the annual review must describe the responses; assign roles and responsibilities with a chain of command with a designated backup; include an inventory of resources; and cover the training and preparedness of administration, staff, and students. The joint rulemaking also requires that each drill must include 4 required elements: a notification system, movement to safe areas, communication with first responders, and accounting for all occupants.

Questions/requests for copies: Deb Vespa, ISBE, 100 N. First St., Springfield IL 62777-0001, 217/785-8779, e-mail: rules @isbe.net or John Fennell, Jr., OSFM, 2035 Stevenson Dr., Springfield IL 62703, 217/785-4144.

SBE also adopted amendments for "Providers of Supplemental Educational Services" (23 Ill Adm Code 675; 30 Ill Reg 5777), effective 8/18/06, to address several issues that have arisen since the November 2005 adoption of this Part. The purpose of this Part is to establish a process whereby SBE will approve supplemental educational service (SES) providers, verify service costs, oversee the process, and take disciplinary action when necessary. The rulemaking addresses: unethical conduct in provider solicitation of exclusive arrangements with districts and improper employment procedures, SES applicants' unresponsiveness to SBE information requests, using a student enrollment tracking system to determine the cost billable to the district for SES, procedures for evaluating the provider's performance,

New Regulations

provider removal from the list of approved providers, and school district parental notification procedures about the availability of SES and approved providers. Additional amendments concern deadlines for SES provider commencement of services and availability of new providers if the deadline for service provision lapses, limitations on administrative and general expenses and allowable exceptions, petitioning SBE to revise its reasonable estimate of per pupil costs due to unforeseen situations, and provider submission of an hourly rate for each district served. (Students will be dropped if they miss 12 sessions in total or 5 consecutive sessions without good cause, as districts are only liable for sessions students attend.) The procedure for evaluating each provider's performance in each district is based on student achievement, student attendance, and parental satisfaction, with separate evaluations for each subject. Achievement will be measured by using calculations to arrive at the difference between expected test score and actual test score on the State tests. That figure may then be used in Appendix B to determine whether the provider is below, meets, or exceeds standards or if there is insufficient information to make a determination. Using that criteria, SBE decides whether the SES provider is in good standing or is placed on probationary "status 1" (less serious, requiring remedial action) or "status 2" (more serious, requiring a reconstitution plan). Changes since 1st Notice state that a provider's performance will not be affected by the results of students who received fewer than 18 hours of instruction in the same program, revise certain time frames to provide flexibility, clarify program cost calculations, and increase the number of missed sessions

leading to dropping a student from the program. Also, make-up sessions and billing in 15-minute increments are allowed, appeal procedures are expanded, and Appendix B is revised to allow the top third of providers to be considered "above standards". Those affected by this rulemaking include not-for-profit organizations and private businesses seeking to provide supplemental educational services.

Questions/requests for copies: Robert Wolfe at the SBE address above, 217/782-7970.

RACE HORSE DRUGGING

The ILLINOIS RACING BOARD adopted emergency amendments to rules titled "Medication" (11 Ill Adm Code 603; 30 Ill Reg 14371), effective 8/21/06, for a maximum of 150 days. An identical proposed rulemaking appears in this issue of the *Illinois Register* at 30 Ill Reg 14260. The rulemakings ban horses from racing if they test positive for erythropoietin or darbepoietin. The ban remains in place until a horse tests negative. Retesting may not occur for 21 days after the first test and must be done by the State Veterinarian at a cost of \$50. A horse may not be disqualified from the race or share of the purse, and the trainer may not be penalized based solely on the presence of these antibodies. Split test samples (part of the test sample is preserved by the lab) are not required. A horse that tests positive remains subject to these requirements whether sold or otherwise transferred.

Questions/requests for copies/comments until 10/16/06: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

NURSING GRANTS

The BOARD OF HIGHER EDUCATION adopted a new Part by emergency rulemaking, effective 8/16/06, for a maximum of 150 days titled "Nurse Educator Fellowship Program" (23 Ill Adm 1105; 30 Ill Reg 14363) to implement Public Act 94-1020. An identical proposed rulemaking appears in this issue of the *Illinois Register* at 30 Ill Reg 14197. The program's purpose is to provide salary supplements to nursing school faculty. An eligible applicant must be an Illinois resident, possess a nursing master's degree, be employed full time in a nursing faculty position at the nominating institution for a minimum of 1 year, have made significant contributions to the nursing profession, and not been a prior recipient within 5 years. The Part also outlines additional nomination and submission procedures. No institution may submit more than 3 nominations in any given award cycle, and BHE will consider the following in determining awards: personal statements, major accomplishments, statewide geographic distribution of fellowship recipients, and tenure status (preference will be given to tenured/tenure track faculty). The amount of the award is set at \$10,000. Recipients who terminate employment within six months after notification of the award will trigger repayment provisions and are not entitled to any remaining portion of the award. Those affected by this rulemaking include colleges and universities with nursing programs and the instructors at those institutions.

Questions/requests for copies/comments concerning the proposed rulemaking until 10/16/06: Sandi Gillilan, BHE, 431 E. Adams St., 2nd Fl., Springfield IL 62701, 217/557-7352.

Proposed Regulations

goods carriers by ICC.

Questions/requests for copies/comments until 10/16/06: Steven L. Matrisch, ICC, Transportation Division, 527 E. Capitol Ave., Springfield IL 62701, 217/782-6447, e-mail: smatrisc@icc.state.il.us

COLLEGE BUILDING PROJECT

The BOARD OF HIGHER EDUCATION proposed amendments to "Noninstructional Capital Improvements and Community College Locally-Funded Capital Projects" (23 Ill Adm 1040; 30 Ill Reg 14184). The rulemaking concerns capital improvements and eliminates Board approval for locally-funded community college projects. Requests for approval of non-instructional capital projects from BHE must be accompanied by descriptions of the requested project scope, rationale, financing, and constituent input into the decisionmaking process. Criteria used by the Board in approving a proposal include: consistency with the scope and mission of the institution, need for additional or replacement space, economic feasibility, and submission of required documentation. An additional amendment changes the name of Part 1040 to "Approval of Noninstructional Capital Projects".

Questions/requests for copies/comments until 10/16/06: Sandi Gillilan at the BHE address and telephone number above.

HUMAN RIGHTS

The DEPARTMENT OF HUMAN RIGHTS proposed amendments to "Procedures Applicable to All Agencies" (44 Ill Adm Code 750; 30 Ill Reg 14240) to add to current regulations the prohibiting of discrimi-

nation against State employees or applicants for State employment because of sexual orientation, citizenship status, or military status. Amendments to a second rulemaking titled "Procedures of the Department of Human Rights" (56 Ill Adm Code 2520; 30 Ill Reg 14246) add an amendment to a notice of charge that covers new harms, bases, or respondents. After such amendment, a respondent has 60 days to file a verified response. Further rulemaking amendments require that a respondent provide changes of address or telephone number or notice of any prolonged absence from his or her current address so the respondent can be located. "Good cause" is further amended to include that the party acted diligently and did not unwarrantedly disregard the fact-finding process, as supported by evidence or affidavit, or that circumstances were beyond the respondent's control. Finally, DHR may vacate an administrative closure only if the statutory 365-day time period plus agreed extensions have not expired.

Questions/requests for copies/comments concerning both rulemakings until 10/16/06: Brent Harzman, DHR, 100 W. Randolph, Ste. 10-100, Chicago IL 60601, 312/814-1906, TTY 312/263-1579.

HOUSING TAX CREDITS

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY proposed amendments to the "Illinois Affordable Housing Tax Credit Program" (47 Ill Adm Code 355; 30 Ill Reg 14220) excluding any governmental entity from the definition of "donor" and adding a limited liability company that has a not-for-profit organization as its sole member to the definition of "sponsor". Instead, the only donations from governmental

entities shall be money, the value of waived permit fees or other customary charges, real property, or loans at below-market interest rates. Application fees are increased to a maximum of \$500 from \$200, and a reservation fee of up to 3% (previously \$500) may be charged when the funds are reserved for the applicant's use. Sponsors will have 12 months (previously 24) from the date of the reservation letter in which to obtain a donation for a project, but they may submit a request for an extension for an additional 12 months. The amendments also delete rental and occupancy restrictions from the provisions of the regulatory agreement. Donation value will be determined on the date of donation except in the case of real property, the value of which will be determined on or prior to the date of donation, and donations may be aggregated from multiple employers for employer-assisted housing projects. Discounted sales of fee simple interest are added to the definition of real property donation. Funds not reserved for employer-assisted housing projects by March of the State fiscal year (now, 1/31) will be available for reservation and allocation to affordable housing projects, technical assistance, or general operating support. Set annual fees for compliance monitoring are abolished and will be determined by the Agency. Real estate developers, contractors, and employers providing housing assistance may be affected by this rulemaking.

Questions/requests for copies/comments until 10/16/06: Richard B. Muller, IHDA, 401 N. Michigan Ave., Chicago IL 60611, 312/836-5327.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's September 12, 2006 meeting in Chicago.

ENVIRONMENTAL PROTECTION AGENCY

"Right-To-Know Notice Costs" (35 Ill Adm Code 1662) proposed 5/19/06 (30 Ill Reg 9258)

STATE BOARD OF EDUCATION

"Public Schools Evaluation, Recognition and Supervision" (23 Ill Adm Code 1) proposed 6/2/06 (30 Ill Reg 9951)

"Determining Special Education Per Capita Tuition Charge" (23 Ill Adm Code 130) proposed 5/5/06 (30 Ill Reg 8003)

"Parental Participation Pilot Project" (23 Ill Adm Code 560) proposed 5/5/06 (30 Ill Reg 8043)

"Class Size Reduction Grants" (23 Ill Adm Code 565) proposed 6/2/06 (30 Ill Reg 9972)

ILLINOIS RACING BOARD

"Purse Recapture" (11 Ill Adm Code 213) proposed 6/9/06 (30 Ill Reg 10258)

"Race Officials" (11 Ill Adm Code 1306) proposed 6/16/06 (30 Ill Reg 10604)

DEPARTMENT OF PUBLIC HEALTH

"Community Living Facilities Code" (77 Ill Adm Code 370) proposed 5/5/06 (30 Ill Reg 8089)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Pharmacy Practice Act of 1987" (68 Ill Adm Code 1330) proposed 3/17/06 (30 Ill Reg 4544)

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